

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNION PACIFIC RAILROAD COMPANY,
in its own capacity and in its capacity as
successor to Union Pacific Railroad
Company;

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

8:14CV237

ORDER

This matter is before the Court on the mandate of the United States Court of Appeals for the Eighth Circuit (“Eighth Circuit”). [Filing No. 79](#). The Eighth Circuit of Appeals reversed this Court’s denial of Union Pacific Railroad Company’s (“the Railroad”) motion for partial summary judgment and corresponding grant of summary judgment to the United States. [Filing No. 76](#). A petition for rehearing was later denied and the mandate was issued. [Filing No. 79](#). A petition for a writ of certiorari was filed and has been denied. [Filing Nos. 80](#) and [81](#).

The parties advised the court in a Rule 26(f) Report (Doc. No. 12 at 13-14) of the parties’ intention to first move for a determination on the merits and later address the calculation of any refund. See [Filing No. 12](#), Rule 26(f) report at 12-14. At that time, the parties requested that, if the Court were to grant summary judgment to the Railroad, the parties would have 60 days in which to “(a) conduct additional discovery limited to the refund-calculation issue and (b) attempt to stipulate to the amount of the overpayment to be refunded to [the Railroad] under a final judgment.” [Id.](#) at 14. It thus

appears that additional proceedings may be required before the Court can enter final judgment. Accordingly, pursuant to the mandate of the Eighth Circuit,

IT IS ORDERED:

1. The Government's motion for summary judgment ([Filing No. 50](#)) is denied.
2. Union Pacific Railroad Company's motion for summary judgment ([Filing No. 51](#)) is granted.
3. Within 10 days of the date of this order the parties shall confer and contact the chambers of the undersigned to schedule a telephonic conference regarding the refund-calculation issue and the progression and resolution of this action.

Dated this 28th day of November, 2018.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge